

E-002/CN-94-795 ORDER ACCEPTING FILING AND DELEGATING PREPARATION OF
ENVIRONMENTAL REPORT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Northern
States Power Company for a Certificate of
Need for Approximately 100 Megawatts of
Wind Generation

ISSUE DATE: October 20, 1994

DOCKET NO. E-002/CN-94-795

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PROCEDURAL HISTORY

On September 23, 1994, Northern States Power Company (NSP or the Company) filed an application for a certificate of need to build 100 MW of wind generation on a portion of a topographically elevated area known as Buffalo Ridge in southwestern Minnesota.

On October 6, 1994, the Commission issued its ORDER GRANTING EXEMPTION FROM CERTAIN FILING REQUIREMENTS AND VARIANCE.

On October 6, 1994, NSP filed an addendum to its certificate of need application: the Certificate of Site Compatibility Application previously filed with the Minnesota Environmental Quality Board (EQB) on September 27, 1994.

On October 13, 1994, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. Filing Accepted

The Company is seeking to receive a certificate of need for the facility prior to siting or construction. The criteria for assessment of need and the application requirements for large electric generation facilities are given in Minn. Rules, Parts 7849.0010 to 7849.0400. Application requirements are specified by Parts 7849.0240, 7849.0250 and 7849.0270 to 7849.0340.

Minn. Rules, Part 7849.0200, subp. 5 states as follows:

Complete applications. The commission must notify the applicant within 30 days of the receipt of an application if the application is not substantially complete. On notification, the applicant may correct any deficiency and may resubmit the application. If the revised application is substantially complete, the date of its submission is considered the application date.

The intent of the completeness review is to ensure that the filing contains the kind and depth of information sufficient to begin the review period. Because of the short time period for processing the filing, it would not be appropriate for the decisionmaker and intervenors to have to use significant portions of the review period to obtain information that should have been in the filing.

Having examined the filing and having considered the comments of the Department, the Commission finds that the filing as supplemented is substantially complete. As such, the application is deemed filed on the date it was submitted, September 24, 1994.

The Commission's finding of substantial completeness is as to form only; it implies no judgment on the merits of the application. To further clarify, acceptance of the filing as substantially complete should not be construed by the applicant as a reason to refuse reasonable discovery requests.

II. Environmental Report Responsibility Delegated

Minn. Rules, chapter 4410 prescribes environmental review for a wide variety of projects. Environmental review of large electric power generating plants (LEPGPS) is provided at two stages. Minn. Rules, Part 4410.7000. At the site certificate stage, the rule requires an environmental impact assessment prepared by the EQB pursuant to Minn. Rules, Part 4410.3210. At the certificate of need stage, the rule provides that the Commission is responsible for preparation of an environmental report on the proposed LEPP. Minn. Rules, Part 4410.7100. The report that the Commission is responsible to prepare becomes a part of the record in the Commission's certificate of need proceeding. As such, the Commission considers it in making its final determination in that proceeding.

Subsequent to the adoption of Minn. Rules, Part 4410.7100, the legislature changed the Commission in ways which preclude it from both preparing the environmental report and evaluating it. The Legislature separated the advocacy and decisionmaking functions into separate agencies: the Department serving as the advocate, the Commission as the disinterested decisionmaker.¹ Consistent with that role change, the Commission generally lacks the staffing levels necessary to prepare and present evidence in its own proceedings.

In a prior docket, the Commission chose to fulfill its responsibilities under Minn. Rules, Part 4410.7100 by arranging for the Department to produce and respond to comments regarding this report. See the Commission's April 20, 1994 Order regarding LSP-Cottage Grove, L.P.'s application for a certificate of need for a large generating facility, Docket No. IP-1/CN-94-004. Such a delegation of authority for preparing the report appears consistent with the Legislature's delineation of the Commission's and the Department's respective roles. On a

¹ Many state utility commissions are structured to combine these functions, with advocacy and advisory staffs working under the same organizational umbrella. The two functions are also combined in several state agencies in Minnesota: e.g. EQB and the Department of Natural Resources (DNR).

practical level, the results of this arrangement were quite satisfactory. Accordingly, the Commission will follow this course of action in this case as well.

ORDER

1. Northern States Power Company's (NSP's or the Company's) certificate of need application is accepted as substantially complete.
2. The Commission delegates its responsibilities for preparation, distribution, and sponsorship of the environmental report required under Minn. Rules, part 4410.7100 to the Department of Public Service.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)